

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
09-CR-357A

LUMNI ZHUTA,

Defendant.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1). On June 29, 2010, defendant Lumni Zhuta filed an omnibus motion seeking a bill of particulars, discovery, and other relief (Dkt. No. 80), and a separate motion seeking dismissal of the indictment (Dkt. No. 82). On October 29, 2010, Magistrate Judge Scott filed an order granting in part and denying in part defendant's omnibus motion, and on that same date filed a Report and Recommendation recommending that the motion to dismiss the indictment be denied in its entirety.

Defendant appealed Magistrate Judge Scott's nondispositive order and filed objections to the Report and Recommendation. The government filed responses in opposition. Oral argument was deemed unnecessary.¹

¹ Notwithstanding defense counsel's request for oral argument, the Court deemed oral argument unnecessary. Counsel submitted a 95-page brief in support of his objections to the Report and Recommendation, a 30-page brief in support of his objections to the Magistrate Judge's Decision and Order, and more than 150 pages of briefs as part of the original moving papers. Those voluminous submissions have provided counsel with ample opportunity to articulate his position and oral argument would not aid this Court in its consideration of the pending motions. See

Pursuant to 28 U.S.C. § 636(b)(1)(A), defendant's appeal of the Magistrate Judge's nondispositive order is reviewed under a "clearly erroneous or contrary to law" standard of review, whereas this Court' reviews the Report and Recommendation under a *de novo* standard of review.

Upon review of the defendant's appeal of Magistrate Judge Scott's nondispositive order, the Court finds that the Order is neither clearly erroneous nor contrary to law. Accordingly, defendant's appeal is denied.

Upon *de novo* review of Magistrate Judge Scott's Report and Recommendation, and after reviewing all submissions in support of and in opposition to the defendant's motion to dismiss the indictment, the Court adopts the Report and Recommendation and denies defendant's motion to dismiss for the reasons stated by Magistrate Judge Scott.

The case is referred back to Magistrate Judge Scott for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: January 24 , 2011

Doctor's Assoc., Inc. v. Distajo, 66 F.3d 438, 448 (2d Cir. 1995) ("Courts have broad discretion to determine how much, if any, oral argument is appropriate in a given case.") Accordingly, defendant's motion for an opportunity to file a reply brief and for argument is denied.